

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.  
THOMAS J. MILLER,  
ATTORNEY GENERAL OF IOWA,  
99AG25112,

Plaintiff,

v.

DAN NELSON AUTOMOTIVE GROUP, INC.  
a South Dakota corporation,  
formerly known as South Dakota Auto Group, Inc.  
d/b/a Dan Nelson Finance Super Center,  
d/b/a J.D. Byrider Sales,  
d/b/a Dan Nelson Auto Network

SOUTH DAKOTA ACCEPTANCE  
CORPORATION, a South Dakota corporation,  
d/b/a Car Now Acceptance Company,  
d/b/a CNAC

DANIEL A. NELSON, in his corporate capacity  
and in his individual capacity

CHRISTIAN J. TAPKEN, in his corporate  
capacity and in his individual capacity

VICTORY PROPERTIES, LLC

Defendants.

EQUITY NO. CE50210

PETITION

FILED  
POLK COUNTY, IA  
05 JAN -7 AM 9:04  
IOWA DISTRICT COURT

The State of Iowa ex rel. Attorney General Thomas J. Miller files this Petition pursuant to the provisions of Iowa Code § 714.16, commonly known as the Iowa Consumer Fraud Act, Iowa Code chapter 537, commonly known as the Iowa Consumer Credit Code (hereinafter "ICCC"), and Iowa Code chapter 706A, commonly known as the Ongoing Criminal Conduct statute, and in support of its claims states as follows.

## INTRODUCTION

The Attorney General brings this civil action regarding the acts and practices of the Dan Nelson Automotive Group, Inc. (hereinafter “Dan Nelson Automotive”), its captive finance arm South Dakota Acceptance Corporation d/b/a CNAC (hereinafter “CNAC”), and their high managerial officers and agents concerning the advertising, sale, and extension of credit for used automobiles.

Dan Nelson Automotive targets vulnerable consumers with marginal credit histories by promising them reliable and safe transportation and the opportunity to build or rebuild their credit. In reality, far from improving their credit and getting their life back together as promised, Dan Nelson Automotive’s customers often find themselves much worse off for having done business with the Defendants, with more debt, worse credit and no working automobile.

Using misleading advertising, Dan Nelson Automotive induces consumers to come to its Finance Super Center locations. Upon arriving, consumers find that cash prices are not displayed on the vehicles and are not revealed to consumers. Indeed, a central component of the Defendants’ business plan is hiding the extremely high purchase price until the end of a lengthy sales process which often lasts several hours. When consumers ask how much a particular automobile costs, the Dan Nelson Automotive salesperson is trained to say that he or she does not know and that it depends on the consumers’ credit. The salesperson then takes the consumers inside where they are asked to authorize Dan Nelson Automotive to pull their credit history, an act which by itself lowers consumers’ credit scores. Consumers must then complete a detailed budget analysis and answer numerous questions about their finances and credit history. With this information, the Defendants calculate the maximum bi-weekly or monthly payment the

consumer can afford and the sales process revolves around emphasizing the bi-weekly or monthly payment, not the total purchase price. Consumers are then told which two or three used vehicles, out of the dozens on the lot, they can purchase. Consumers are then charged a purchase price far in excess of the retail value of the vehicle, with a loan term that is likely to exceed the mechanical life of the vehicle and a typical interest rate of 24.95%.

This predatory system is aggravated by the poor condition of the automobiles sold by Dan Nelson Automotive, with many breaking down or suffering serious mechanical problems after purchase. While most vehicles sold by Dan Nelson Automotive automatically come with an in-house warranty, the warranty is often not honored in a timely manner or the repair work is of a substandard quality, causing additional financial strain on consumers who often own only one automobile.

Because of the overinflated prices, extremely high interest rates, and condition of the vehicles, consumers immediately owe substantially more than what the automobiles are worth. Thus, many consumers effectively become trapped, forced to return to Dan Nelson Automotive for any future transactions because the substantial negative equity in the vehicle effectively prevents them from going to any other dealership or obtaining refinancing through other sources.

Recognizing that its deal structure traps consumers and prevents them from going to other dealerships, Dan Nelson Automotive promises consumers that if they make timely payments for a 12 to 18 month period, they will be able to trade in their car for a newer, better used automobile. While some consumers are able to meet this requirement and do successfully trade up, they are in the minority as most consumers are not able to overcome the extremely high purchase price, high interest rates, and multiple repair bills. For those consumers who are able to

trade in their vehicles, the substantial negative equity from their first loan is simply rolled into their second loan, resulting in a situation where the consumer is in effect paying for two automobiles, but only driving one.

When consumers are not able to make their payments, Defendants use harassing and illegal debt collection techniques designed to intimidate and embarrass consumers such as contacting their family members. Ultimately, many consumers default on these predatory loans, resulting in high repossession rates. After sale of the repossessed vehicle at auction, often for a small fraction of the purchase price paid by the consumer, Dan Nelson Automotive, through its captive finance arm CNAC, would, until recently, sue the consumer in small claims court for the deficiency. Dan Nelson Automotive, in conjunction with CNAC, has obtained at least 1,100 deficiency judgments against consumers.

Finally, Defendants have engaged in a pattern and practice of supplying misleading and false information to credit bureaus, banks, and other outside lenders. For example, when consumers have been unable to make the cash down payment required by an outside lender, Defendants have instructed consumers to lie and falsely state that they made the down payment when the lender calls to verify that the down payment was actually made.

Through this tightly controlled system, Dan Nelson Automotive and CNAC have harmed thousands of Iowa consumers, as well as defrauded financial institutions. The Attorney General brings this action to stop Defendants' unlawful practices, obtain restitution for injured consumers, and disgorge Defendants' ill-gotten gains.

#### **PARTIES**

1. Thomas J. Miller is the duly elected Attorney General of the State of Iowa.

2. Dan Nelson Automotive Group, Inc. is a South Dakota corporation headquartered at 2900 W. 12<sup>th</sup> Street, Sioux Falls, South Dakota. It is authorized to do business in the State of Iowa and regularly engages in the business of making consumer credit sales of used automobiles in Sioux City, Council Bluffs and Des Moines, Iowa. The corporation was formerly known as the South Dakota Auto Group, Inc.

3. South Dakota Acceptance Corporation is a South Dakota corporation headquartered at 2900 W. 12<sup>th</sup> Street, Sioux Falls, South Dakota. South Dakota Acceptance Corporation does business in the State of Iowa as Car Now Acceptance Company a/k/a CNAC. It is authorized to do business in the State of Iowa and regularly engages in the business of making consumer loans in Sioux City, Council Bluffs and Des Moines, Iowa.

4. Individual Defendant Daniel A. Nelson is the President, Secretary, and 75% owner of both Dan Nelson Automotive and CNAC. At all relevant times, acting alone or in concert with others, Mr. Nelson has formulated, directed, and controlled company policy and participated in the acts and practices of both Dan Nelson Automotive and CNAC. He is a resident of the State of South Dakota and regularly transacts business in the State of Iowa.

5. Individual Defendant Christian J. Tapken is the Vice-President, Treasurer, Chief Operating Officer and 25% owner of both Dan Nelson Automotive and CNAC. At all relevant times, acting alone or in concert with others, Mr. Tapken has formulated, directed, and controlled company policy and participated in the acts and practices of both Dan Nelson Automotive and CNAC. He is a resident of the State of South Dakota and regularly transacts business in the State of Iowa.

6. Defendant Victory Properties LLC is a South Dakota limited liability company owned

by Mr. Nelson and Mr. Tapken and is used by them as a land holding company. Upon information and belief, Victory Properties LLC is the owner of Defendants' Des Moines, Council Bluffs, and Sioux City business properties.

7. Dan Nelson Automotive Group, South Dakota Acceptance Corporation, Victory Properties, LLC, Daniel A. Nelson and Christian J. Tapken have acted in concert with one another in furtherance of the allegations set forth below. Hereinafter, the word "Defendants" shall be used to refer to the collective action of the named Defendants.

### **JURISDICTION**

8. The Attorney General of Iowa has the authority to initiate an action for consumer fraud in violation of Iowa Code § 714.16. In addition, the Attorney General is the administrator of the Iowa Consumer Credit Code, pursuant to Iowa Code § 537.6103, and has the authority to initiate an action for violations of the Consumer Credit Code under section 537.6104.

9. The Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a), provides in pertinent part:

The act use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise ... whether or not a person has in fact been misled, deceived, or damaged is an unlawful practice.

10. Iowa Code § 714.16(1) provides the following definitions:

(f) "Deception" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

(n) "Unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

11. Iowa Code § 714.16(7) explains that except in the case of a material omission, it is

not necessary for the Attorney General to prove reliance, damages, intent, or knowledge, stating in pertinent part:

Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth.

12. The Iowa Consumer Credit Code is to be liberally construed and applied to promote its underlying purposes and policies which include protecting consumers against unfair practices and encouraging the development of fair and economically sound consumer credit practices. *See* Iowa Code § 537.1102.

13. The Ongoing Criminal Conduct statute, Iowa Code chapter 706A, allows both civil and criminal sanctions. Under the authority of section 706A.3(12), the Attorney General brings this civil action as *parens patriae* on behalf of the general economy, resources, and welfare of this State. Additionally, the Attorney General has been given authority to act as prosecuting attorney by the Polk County Attorney, and under that authority brings this action to seek other civil equitable relief as outlined in section 706A.3(3)(a)-(g).

#### **VENUE**

14. Venue is proper in Polk County, pursuant to Iowa Code § 714.16(10), for the Consumer Fraud Act violations because the Defendants have a principal business location in Polk County, otherwise conduct business in Polk County, and one or more of the victims reside in Polk County. Venue is proper in Polk County, pursuant to Iowa Code § 537.6116, for the Iowa Consumer Credit Code violations because the Defendants transact business in Polk County. Venue is proper in Polk County for the Ongoing Criminal Conduct violations because the

Defendants own property and transact business in Polk County.

## **FACTUAL ALLEGATIONS**

### **General Allegations**

15. Defendants' business concentrates on making credit sales to consumers with marginal credit histories. Defendants have made more than one hundred million dollars of sales and loans since beginning operations in Iowa in 1996.

16. Defendants initially began operation solely as a J.D. Byrider franchise, a national chain of used car sales and special finance dealerships which employs a system commonly referred to as "buy here pay here" because the sales are financed by the dealership itself, not outside lenders, and consumers make their payments at the dealership. As part of the J.D. Byrider franchise, Dan Nelson Automotive also received the right to use the Byrider captive finance system known as Car Now Acceptance Company or CNAC. Dan Nelson Automotive named its captive finance company South Dakota Acceptance Corporation d/b/a CNAC. The sole purpose of CNAC's operations in Iowa is to finance vehicles sold by Dan Nelson Automotive. Defendants opened a J.D. Byrider franchise in Sioux City, Iowa in July 1996, and a Des Moines franchise in October 1997.

17. In or around the 2<sup>nd</sup> quarter of 2000, Defendants stopped operating solely as a J.D. Byrider franchisee and changed the name of its Des Moines location to the Dan Nelson Finance Super Center. Under the Finance Super Center model consumers are split into two tiers. Those with better, but still marginal, credit are considered Finance Super Center customers and are sold the newer and lower mileage used vehicles. Upon information and belief, these sales are financed by outside lenders. Those with worse credit are considered J.D. Byrider or CNAC



customers and are sold older, high-mileage, and more mechanically suspect vehicles at an almost uniform 24.95% interest rate. These deals are financed internally by CNAC. CNAC customers are then told that pursuant to the "credit reestablishment program" if they make timely payments for a 12 to 18 month period, they will be able to trade-up into one of the newer Finance Super Center vehicles.

18. Defendants established a second Dan Nelson Finance Super Center in Council Bluffs, Iowa in January 2001. Upon information and belief, in 2004 Defendants converted the former Sioux City J.D. Byrider franchise into Dan Nelson Mazda and have stopped using the "Byrider" practices described in this Petition at the Sioux City location.

19. Although nominally a separate corporation, South Dakota Acceptance Corporation, d/b/a CNAC, is in fact inextricably interwoven with Dan Nelson Automotive. Dan Nelson Automotive and CNAC share the same:

- Corporate offices (2900 W. 12<sup>th</sup> Sioux Falls, South Dakota)
- Branch locations in Des Moines & Sioux City
- President (Daniel A. Nelson)
- Corporate officers (Daniel A. Nelson & Chris Tapken)
- Directors (Daniel A. Nelson & Chris Tapken)
- Owners (Daniel A. Nelson (75% of both) & Chris Tapken (25% of both))
- In- House General counsel (Robert Junso)
- Registered agent for service (Sioux City law firm)
- Common telephone system (an employee in the Dan Nelson Automotive office can pick up a phone line in the CNAC office and vice versa).

In addition, although CNAC occupies office space in Dan Nelson Automotive buildings in Des Moines and Sioux City, CNAC has no rental agreement or lease for the space occupied by CNAC and pays for no fixed utilities. These two allegedly separate corporations function as a single entity for all practical purposes.

### **Deceptive Advertising**

20. Defendants extensively advertise in print, radio and television, spending several million dollars a year on advertising costs. Many of these advertisements contain false and deceptive statements and representations as well as omissions of material fact, including but not limited to the following:

a. Defendants have repeatedly broadcast on Iowa television stations a thirty minute paid advertisement more commonly referred to as the “Drive Now infomercial.” This infomercial begins and ends with the disclaimer: “Actual customers not paid for testimonials.” In fact, several of the customers who appear in the infomercial and make positive statements about Dan Nelson Automotive were paid fifty dollars for their participation and statements. Those customers, however, had very different experiences than their paid-for statements in that after purchasing their vehicles at exorbitant prices, under the ruse of credit repair, the vehicles repeatedly suffered mechanical breakdowns.

In addition to the paid testimonials, the infomercial makes the following false or deceptive claims:

- That “...when you come onto a Dan Nelson lot any car on the lot that you see, we have the ability to get you approved for that vehicle.” In reality, most consumers are told which two or three vehicles on the lot they can

purchase.

- That "don't forget folks, this is a new car dealership" and "...there are new cars." There are no new cars for sale at the Des Moines Finance Super Center and in fact, Dan Nelson Automotive is not licensed to sell new automobiles in Des Moines.
- That "we've got so many choices when it comes to options of colors, options of types and the types of vehicles that you won't believe." That "you're choosing options, you're choosing colors, you're choosing makes of vehicles." In reality, most consumers have almost no discretion on options or even the make of the vehicle because they are told which two or three vehicles they will be allowed to purchase.
- That "I love to see a happy customer ... [w]hether it is someone who might have had a problem with their vehicle but they've got a warranty we're backing it up. We always stand behind our vehicles here at Dan Nelson." In reality, Dan Nelson Automotive has in many instances failed to honor the warranty in a timely manner or the warranty work provided is of a substandard quality, leaving the consumer with a poorly working vehicle.
- That, in a short period of time, credit scores can be increased from 25 to 700, and this reestablished credit may help you buy your "dream house." In reality, Dan Nelson Automotive's "credit reestablishment program" is nothing more than reporting the customer's payment history to the three major credit bureaus. There is, in essence, no program other than the

extension of credit and the reporting of the subsequent payment history, which too often is a damaging report.

- That they work with "...dozens of banks so that we can find the loan program that works for you. Not just one program that we try to sell you on." In reality, J.D. Byrider customers are financed only through the captive financing arm CNAC and these customers' only option is to participate in the "credit reestablishment program." Loans for Finance Super Center customers are, however, sold to multiple outside lenders.

In addition, the infomercial makes multiple deceptive and misleading statements of a general nature, designed to cast Dan Nelson Automotive as a business which is offering a helping hand to people in need, but which do not represent the experience of many Iowa Dan Nelson Automotive customers. Some representative statements include:

- That a customer's credit can be reestablished and that "what this is about is getting your life back together so that you can feel good about yourself."
- That "this is a business doing a service for this community by getting you approved to drive no matter what the credit you have."
- That "it is really the working person, the working family, the people who are trying to make the ends meet, that need an affordable vehicle. They need transportation to work and get back and forth from work. Those are the people we've built our business on."
- That "when things happen in life you need someone to stand there with you, stand behind you and that's what Dan Nelson and our entire staff is

here to do.”

b. Other print and radio advertisements contain, but are not limited to, the following false or misleading statements:

- Claiming the dealership is overstocked and thus automobiles will be sold for \$79 down and \$79 per month, when in fact the Defendants do not sell automobiles at those terms to their average customer.
- Claiming 100% guaranteed credit approval when in fact some credit applications are not approved.
- Offering 0% financing for five years on every used vehicle in stock, when in reality the majority of customers are charged 24.95% interest.
- Claiming "...Sioux City's only seized and repossessed vehicle event!" while using a symbol very similar in appearance to the Great Seal of the United States of America. This symbol, along with the word seizure is calculated to convey a false impression of government sponsorship or approval.

c. Dan Nelson Automotive has deceptively and unfairly advertised that its vehicle prices have been reduced based on multiple false premises, including but not limited to:

- Suggesting that its inventory is comprised of a one time "lease elimination sale" when in fact only a small fraction of the vehicles offered for sale are from leasing companies and the inventory is made up of its normal composition from various sources.
- Suggesting that a major national rental car company has gone bankrupt

and supplied cars to Dan Nelson Automotive when in fact no such bankruptcy had occurred.

d. Defendants also utilize advertisements on internet web pages listing several automobiles for sale at the Des Moines and other locations when in fact the automobiles are not actually on the lot for sale at the advertised locations.

e. In total, Defendants' advertising has the tendency or capacity to mislead a substantial number of consumers as to material facts.

### **Credit Reestablishment Program**

21. Dan Nelson Automotive targets consumers with marginal or no credit histories. Those consumers with the worst credit are sold the "J.D. Byrider" vehicles which are assigned to CNAC. Because of these consumers' marginal credit histories, CNAC consumers are financed at a nearly uniform 24.95% interest rate (near the statutory usury cap of 27%).

22. Defendants unfairly and deceptively use a "credit reestablishment program" to induce consumers to purchase vehicles which are much more expensive than comparable vehicles on other lots, when the credit reestablishment program has little actual benefit or value and in fact the Defendants' system results in making many consumers' already bad credit worse.

23. Defendants' advertising program is designed to sell the idea that if consumers purchase an automobile, they will not only be buying dependable transportation, they will also be enrolled in a separate "program" to rebuild their credit. Many consumers cite the "credit reestablishment program" as a significant reason for their decision to purchase from Dan Nelson Automotive.

24. In reality, the "program" consists of nothing more than the extension of credit by the

Defendants and their promise to report their customers' payment history to the three major credit bureaus.

25. While the Defendants strongly suggest that they are offering something extra to these credit impaired consumers, they are not as Dan Nelson Automotive's competitors also report the payment history of their customers.

### **Deceptive Pricing and Sales Practices**

26. Defendants deceptively and unfairly mislead consumers by failing to disclose, if not actively hiding, the price of vehicles from consumers. In an attempt to control the transaction as much as possible, Dan Nelson Automotive's system is designed to steer consumers into the vehicles Dan Nelson Automotive wants them to purchase instead of allowing consumers to choose their own vehicles.

27. Dan Nelson Automotive instructs its employees to withhold the prices of vehicles that are for sale and tell consumers that they do not know the price until after they look at the individual consumer's credit history. The consumer is then taken inside and only after the consumer's credit history is pulled and the consumer is interviewed in great detail about his or her financial situation is the consumer told which 2 or 3 vehicles they are eligible to purchase and from which they must choose. Only after selecting a vehicle is the deal structured, the consumer approved by CNAC, and the price disclosed. When the price is finally disclosed, however, Defendants emphasize the monthly or bi-weekly payment, rather than the overall price. The sales process often takes several hours, including leaving consumers anxiously waiting for long periods of time.

28. Upon information and belief, no automobile is priced independent of a specific

consumer transaction. Instead, the Defendants work backwards from the individual consumer's budget to place that consumer in a vehicle which is at or near the maximum monthly payment the Defendants believe the specific consumer can afford.

29. Part of the deception is making consumers believe that they have been approved by an outside, independent finance company in CNAC. This deception is deliberately used to separate collection efforts from the dealership so that when consumers have mechanical problems with their vehicles they can simply be told by CNAC that issues with the vehicle are not CNAC's concern and that the consumer must pay regardless of any warranty claims or repair issues, when in reality CNAC is owned by Mr. Nelson and Mr. Tapken and is for all practical purposes the same business.

30. In some instances, after completing the budget analysis Defendants falsely tell some consumers that they have poor credit and would not be able to receive credit and/or purchase an automobile at another dealership when in fact the consumer's credit would allow him or her to obtain credit and purchase a vehicle at another dealership. In effect, these consumers are "steered" into extremely high interest loans when they actually qualify for lower cost loans.

31. In total, Defendants' pricing and sales practices are designed to keep consumers from understanding the extremely high prices they are being charged for older used vehicles in poor condition with very high mileage by withholding prices until after consumers have had their credit report pulled, been told that they have poor credit and that no one else will sell them an automobile, answered numerous personal financial questions, and invested several hours of their time. These practices leave consumers vulnerable to the unfair contracts they ultimately sign.



## **Churning**

32. Defendants also employ what is known as a deferred installment payment or “DIP.” Under this program the consumer is given credit for the entire down payment at the time of purchase, thus reducing the total amount of the regular contractual loan. The consumer does not, however, pay the entire down payment at the time the deal is closed. Instead, the down payment is paid in two or more installments and the first contractual loan payment is pushed out several weeks, until after the DIP has been paid.

33. In order to capitalize on situations where consumers default almost immediately on their loans, Defendants have adopted a national J.D. Byrider policy known as a “back-off.” Under this policy, if the consumer fails to pay the entire DIP prior to making the first contractual loan payment, Defendants take back the vehicle, cancel the sale and unwind the deal, and in most instances place the same vehicle back on their lot for resale. Notably, while Defendants treat the loan as having a zero balance, in some instances they do not refund any DIP payments collected from the consumer. This policy results in repeatedly selling the same inventory over and over again in what is commonly referred to as “churning.” Since January of 2000, over 900 cars have been sold more than once with some being sold as many as 6 times.

34. Upon information and belief, the vehicle is frequently not titled in the consumer’s name in a “back-off” situation. Accordingly, future purchasers are not informed of the material fact that their vehicle has actually had multiple other owners not revealed by the title history.

## **Condition of Vehicles**

35. Dan Nelson Automotive proclaims that it places its used automobiles through a multiple point inspection and reconditioning process before offering them for sale. Through this

claim, Dan Nelson Automotive implies, if not explicitly claims, that because their automobiles are thoroughly inspected, they are offering safe and reliable transportation.

36. In reality, many of the vehicles offered for sale by Dan Nelson Automotive are of a substandard quality. In fact, many of the vehicles have serious mechanical problems, have suffered serious damage, or even previously been involved in accidents. Dan Nelson Automotive misleads its customers, either through misrepresentations or the omissions of material fact, regarding the quality and reliability of its vehicles.

#### **Failure to Fully Honor Warranty Program**

37. Defendants unfairly and deceptively use their warranty program to induce consumers to purchase vehicles which are much more expensive than comparable vehicles on other lots.

38. All J.D. Byrider or CNAC vehicles automatically come with a limited in-house warranty. The terms of this warranty have changed over time. Defendants currently provide on CNAC vehicles an 18 month or 18,000 mile limited warranty with no deductible. Past warranty terms were far less generous, generally covering a shorter length of time and included a deductible. Notably, because the typical term of a CNAC loan is between 36 and 40 months, the warranty only covers at most ½ of the loan term, leaving consumers without protection when their older vehicles with extremely high mileage are likely to break down.

39. Dan Nelson Automotive heavily promotes the warranty program, claiming that the warranty helps give consumers peace of mind because most of its competitors either do not automatically provide a warranty with used car sales or at least not one of the duration and quality of the Dan Nelson Automotive warranty. In reality, almost all of the other dealerships which serve the same market segment as Dan Nelson Automotive offer for sale an equivalent

third party warranty.

40. The warranty is also used, in conjunction with the “credit reestablishment program,” as a justification for the extremely high purchase price of the vehicles. Defendants claim that because of the warranty, they are offering a total program to the consumer, not just an automobile.

41. Dan Nelson Automotive has failed in many instances to either honor the terms of its various warranties or to perform the warranty work in a timely manner. Significantly, unlike third party warranties, which are generally honored at dozens of locations, the Dan Nelson Automotive warranty is only honored at one of the Dan Nelson dealerships, which for most consumers is a single location. Multiple consumers have reported that the warranty repair work done by Dan Nelson Automotive is of a substandard quality, requiring multiple repair attempts, or that the repair work is not done in a timely fashion. Because many CNAC customers have only one vehicle, any delay in the repair of that vehicle is a substantial hardship.

42. In addition, the fact that consumers must rely upon Dan Nelson Automotive to repair their vehicles under the warranty program grants Dan Nelson Automotive a great deal of power and discretion rendering consumers potentially vulnerable to abusive collection and sales tactics.

### **Unconscionability**

43. At all relevant times, the Defendants regularly extended or offered to extend consumer credit for which a finance charge was imposed pursuant to a written agreement. Therefore, the automobile purchase contracts signed by Dan Nelson Automotive customers and the loans extended by CNAC are consumer credit transactions.

44. Dan Nelson Automotive assigns the majority of the financing documents (Retail

Installment Contracts) to its alter ego sister corporation South Dakota Acceptance Corporation d/b/a CNAC. Daniel Nelson and Chris Tapken jointly own and control both South Dakota Acceptance Corporation and Dan Nelson Automotive.

45. Iowa Code § 537.5108(1) provides that if a court finds as a matter of law a consumer credit transaction or agreement “to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement ....”

46. An agreement or transaction can be found unconscionable by showing “[b]elief by the seller, lessor, or lender at the time a transaction is entered into that there is no reasonable probability of payment in full of the obligation by the consumer or debtor.” Iowa Code § 537.5108(4)(a).

47. Under the direction of Dan Nelson Automotive and CNAC managers, sales staff have in some instances sold vehicles to individuals where the staff knew or should have known that there was no reasonable probability of payment in full by the consumer. As an example, almost 14% of Defendants’ loans fail before the first contractual payment is due and result in a “back-off.”

48. In fact, the Finance Super Center business model is centered on the concept of putting consumers with the worst credit into high dollar, high interest rate loans, for 12 to 18 months to rebuild their credit and then trade that vehicle in for a better used automobile. Unfortunately, many consumers never realize the promise of rebuilt credit, are never able to trade-up into a second vehicle, and cannot continue to service the extremely expensive CNAC loan, resulting in a loan failure rate of up to 36% (whether through back-off, repossession, or other charge-off).

49. For those consumers who are able to trade-up into a Finance Super Center vehicle, the substantial negative equity from the first loan is simply rolled into the second loan, despite the fact that many consumers are deceptively led to believe during the purchase of the first vehicle that their loan balance will be “paid off” or forgiven by CNAC if they purchase a second vehicle.

#### **Debt Collection Violations**

50. CNAC is a creditor collecting a debt under the Iowa Debt Collection Practices Act, Iowa Code § 537.7101 *et seq.*, which is a subdivision of the Iowa Consumer Credit Code.

51. Since at least March 15, 1999, and continuing to the present day, CNAC regularly utilizes the following contractual clause in its “CNAC Agreement Form” signed at the time of purchase: “The parties, in consideration of entering into the Contract, do hereby waive the right to trial by jury and the right to change of venue from County and/or Judge in any dispute arising out of the terms of the Contract. The parties further agree that Polk County shall be the venue for any litigation to collect any amounts due and owing pursuant to the Contract.”

52. Under Iowa Code § 537.1107(1), except in settlement of a bona fide dispute, a consumer may not waive or agree to forego rights or benefits provided under the ICCC in a consumer credit transaction.

53. Under section 537.5113, venue for an action by a creditor against a consumer arising from consumer credit transactions actions shall be in the county of the consumer’s residence.

54. Filing a lawsuit in the improper county of venue is an act prohibited by the Iowa Consumer Credit Code and an unfair debt collection practice. See Iowa Code §537.7103(1)(f) (prohibiting a debt collector from taking or threatening to take an action “prohibited by this

chapter or any other law”).

55. Since January 1, 1997, South Dakota Acceptance Corporation has sued approximately 1,100 consumers in small claims court for deficiency judgments. Pursuant to the waiver described above, any Iowa consumer who resides in a county other than the county where the respective Dan Nelson Automotive dealership was located (Polk, Woodbury, or Pottawattamie), would have been sued in a county of improper venue.

56. In 2001, Defendants’ in-house counsel, Robert Junso (a high managerial agent of the corporate Defendants), personally participated in several cases which were filed in the improper venue, including filing an unsuccessful resistance to a motion to change venue, and thus had notice of the improper filings.

57. After having notice of the unlawful venue practices, from September 2001 through November 2002 Defendants filed at least 28 more small claims actions in Polk County where the venue was unlawful.

58. Since at least March 15, 1999, and continuing to the present day, CNAC regularly utilizes the following contractual clause in its “CNAC Agreement Form” signed at the time of purchase: “I hereby authorize CNAC or third-party assignee to contact or communicate with any third-party in attempting to collect this debt.”

59. As stated above, under Iowa Code § 537.1107(1), except in settlement of a bona fide dispute, a consumer may not waive or agree to forego rights or benefits provided under the ICCA in a consumer credit transaction.

60. Under Iowa Code § 537.7103(3)(a), a debt collector is prohibited from communicating or threatening to communicate or imply the fact of a debt to a person other than

the debtor, except with the written permission of the debtor given after default, and certain other limited exceptions.

61. As part of the sales process, Dan Nelson Automotive and CNAC require purchasers to list 8 to 10 references, including contact information. Most consumers give their employer, friends, and family members as references. Relying upon the waiver described above, when consumers get behind on their payments CNAC employees engage in harassing debt collection techniques intended to embarrass the consumer such as communicating the fact of the debt, the outstanding balance, and/or the fact that the debt is in default to the consumer's employer, family members, or other references.

62. Communicating or implying the fact of a debt or that the debt is in default to someone other than the debtor is a violation of the Iowa Consumer Credit Code and an unfair debt collection practice.

63. In addition, as part of the collection effort, in some instances CNAC employees used profane or obscene language or language that is intended to abuse the hearer and by which its utterance would tend to incite an immediate breach of the peace in violation of Iowa Code § 537.7103(2)(a).

#### **False and Misleading Advertisements**

64. As alleged in Paragraph 20 (a)-(e) above, Defendants have engaged in a campaign of deceptive and misleading advertisements in violation of Iowa Code § 537.3209.

#### **Ongoing Criminal Conduct Allegations**

65. Daniel A. Nelson is the President, Secretary and 75% owner of both South Dakota Acceptance Corporation d/b/a CNAC and the Dan Nelson Automotive Group.

66. Christian J. Tapken is the Vice President, Treasurer, Chief Operating Officer and 25% owner of both South Dakota Acceptance Corporation d/b/a CNAC and the Dan Nelson Automotive Group.

67. Upon information and belief, Mr. Nelson and Mr. Tapken are also the joint owners of Victory Properties, LLC, which acts as a land holding company for the properties on which Dan Nelson Automotive and CNAC operate.

68. Mr. Nelson and Mr. Tapken, as the corporate officers and owners of CNAC and Dan Nelson Automotive Group, are the high managerial agents of the respective entities. As such, they direct and control corporate policy.

69. Robert Junso, as in-house counsel and acting as the head of the debt collection effort, is a high managerial agent for the Defendants.

70. Some of the actions which constitute ongoing criminal conduct include, but are not limited to, the following activity committed for financial gain on a continuing basis:

(a) Willfully and knowingly suing Iowa consumers in a county other than the county in which the consumer resides, as alleged in paragraphs 50 through 57 above.

(b) Willfully and knowingly communicating or threatening to communicate or imply the fact of a debt to a person other than the debtor, including the debtor's friends or family members, as alleged in paragraphs 58 through 62 above.

(c) As a matter of corporate policy, misrepresenting the payment history of certain consumers to the major credit bureaus as part of a scheme to get those consumers refinanced into a different vehicle. For example, on June 23, 2003,



Dan Nelson Automotive and CNAC Vice-President and Chief Operating Officer Chris Tapken issued a written policy to management directing that certain consumers be allowed to be refinanced into a different vehicle under a plan designed to keep customers paying who still owed a balance but did not have a working automobile any longer (either through accident or the vehicle being deemed "mechanically dead"). Under this plan, consumers would be given the opportunity to get into a different vehicle and only carry part of the balance (negative equity) from their original loan to the second loan. The policy then directed that employees should deliberately misrepresent the status of the original loan to the credit bureaus, stating, "...any remaining balance after that will be charged off, but should be reported to the credit bureau as paid in full."

(d) Representatives of Defendants have also instructed Finance Super Center customers to directly lie to banks and other outside lenders about the status of their down payment. For example, in one instance in the Fall of 2004, an outside lender required a cash down payment of \$1,000 in order to provide financing. When the customer could not come up with the required down payment, Dan Nelson Automotive simply told the customer to lie when the bank called and falsely report that she had made the \$1,000 down payment. Through this practice, Defendants have misled and deceived outside lenders as to the true nature of the risk they are undertaking.

71. The Defendants herein have committed acts of specified unlawful activity, in that, for financial gain on a continuing basis, they have committed acts punishable in the State of

Iowa as indictable misdemeanors or, in the alternative, have engaged in negligent empowerment of specified unlawful activity, in that they negligently allow property owned or controlled by the Defendants to be used to facilitate specified unlawful activity, as follows:

(a) Willfully and knowingly collecting or attempting to collect consumer credit debts by bringing actions against consumers in a county other than that of the consumer's residence in violation of Iowa Code §§ 537.5113 and 537.7103(1)(f).

Pursuant to Iowa Code § 537.5301(4), a "person who willfully and knowingly violates the provisions of section 537.7103 is guilty of a serious misdemeanor."

(b) Willfully and knowingly collecting or attempting to collect consumer credit debts by communicating or threatening to communicate or imply the fact of a debt to person other than the debtor in violation of Iowa Code §§ 537.7103(3)(a) and 537.5301(4) (serious misdemeanor).

(c) Knowing they had no privilege to do so, tampering with records by falsifying writings or records with the intent to deceive in violation of Iowa Code § 715A.5 (aggravated misdemeanor).

(d) Commanding, entreating, or otherwise attempting to persuade another to commit an aggravated misdemeanor, with the intent that such act be done (e.g., Tampering with Records), in violation of Iowa Code § 705.1 (aggravated misdemeanor).

72. By their very nature, the predicate acts described in paragraph 70(a)-(d) above project into the future with a threat of repetition and are not isolated events.

73. Dan Nelson Automotive Group, South Dakota Acceptance Corporation, Victory

Properties, LLC, Daniel A. Nelson and Christian J. Tapken acted in concert with one another in furtherance of the above mentioned offenses.

### **CAUSES OF ACTION**

74. Paragraphs 1 through 73 are incorporated herein by reference.

### **COUNT I**

#### **CONSUMER FRAUD ACT VIOLATIONS**

75. Defendants' business transactions in Iowa are in connection with the lease, sale, or advertisement of merchandise.

76. Defendants, both individually and as a collective scheme, have violated the prohibitions of Iowa Code § 714.16(2)(a) by engaging in the following deceptive and unfair acts, practices, and omissions:

- a. Misleading advertising as set forth in paragraph 20 (a)-(e).
- b. Using a deceptive and misleading credit reestablishment program as set forth in paragraphs 21 through 25 and paragraphs 48 through 49.
- c. Using misleading, deceptive, and unfair vehicle pricing and sales policies and practices as set forth in paragraphs 26 through 31 including but not limited to: hiding or failing to disclose vehicle prices, requiring detailed financial information and a credit check before disclosing price, restricting consumer choice by instructing consumers which automobiles they may purchase, keeping consumers on premises unnecessarily for hours on end, emphasizing the monthly or bi-weekly payment to the consumer rather than the purchase price, making consumers believe that CNAC is completely separate and not related to Dan Nelson Automotive, and steering consumers into high interest loans with worse terms than the consumers' credit qualifies for.
- d. Selling the same vehicles multiple times in what is commonly referred to as churning, as set forth in paragraphs 32 to 34.
- e. Misleading consumers regarding the quality of vehicles being sold, as set forth in paragraphs 35 to 36.
- f. Failure to fully honor warranties as set forth in paragraphs 37 to 42.

g. Misrepresenting to outside lenders and the credit bureaus the true payment history of its customers, as set forth in paragraph 70 (c) & (d).

## **COUNT II**

### **CONSUMER CREDIT CODE VIOLATIONS**

77. At all times relevant hereto, the Defendants regularly extended or offered to extend consumer credit for which a finance charge was imposed pursuant to a written agreement.

Therefore, the automobile purchase contracts signed by Dan Nelson Automotive customers and the consumer loans made by CNAC are consumer credit transactions.

78. The majority of the financing documents (Retail Installment Contracts) are assigned by Dan Nelson Automotive Group Inc., to its alter ego sister corporation South Dakota Acceptance Corporation d/b/a CNAC. Daniel Nelson and Chris Tapken jointly own and control both South Dakota Acceptance Corporation and the Dan Nelson Automotive Group.

79. The Attorney General has sent a demand letter to both Dan Nelson Automotive and CNAC as required by Iowa Code § 537.6113.

80. Defendants have violated the Iowa Consumer Credit Code's prohibition of unconscionable contracts, Iowa Code § 537.5108, as set forth in paragraphs 43 through 49.

81. Defendant South Dakota Acceptance Corporation engaged in violations of the Iowa Debt Collection Practices Act by filing collection actions in the wrong county of venue in violation of Iowa Code § 537.5113 and otherwise engaging in prohibited debt collection practices in violation of Iowa Code § 537.7103, as set forth in paragraphs 50 through 63.

82. Defendant Dan Nelson Automotive engaged in violations of the Iowa Consumer Credit Code by engaging in false, misleading and deceptive advertising in violation of Iowa Code § 537.3209(1) as set forth in paragraph 20 (a)-(e) and paragraph 64.

### **COUNT III**

#### **ONGOING CRIMINAL CONDUCT**

83. Defendants have engaged in acts of specified unlawful activity in violation of Iowa Code § 706A.2(4), in that for financial gain on a continuing basis, they committed acts punishable as indictable misdemeanors in the State of Iowa, as set forth in paragraphs 65 through 73.

84. In the alternative, Defendants Nelson and Tapken have engaged in negligent empowerment of specified unlawful activity in violation of Iowa Code § 706A.2(5)(a), in that they negligently allowed property owned or controlled by them to be used to facilitate specified unlawful activity, as set forth in paragraphs 65 through 73.

#### **REQUEST FOR RELIEF**

The State respectfully requests the Court grant relief against the Defendants as follows:

##### **Consumer Fraud Act**

A. That the Court, pursuant to Iowa Code § 714.16(7), permanently enjoin each of the Defendants and (as applicable) each Defendant's directors, officers, principals, partners, employees, agents, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations, or other entities, acting in concert or participating with Defendants who have actual or constructive notice of the Court's injunction from engaging in the deceptive, misleading, unfair, and omissive acts and practices alleged in this Petition or otherwise violating the Iowa Consumer Fraud Act.

B. That the Court expand the provisions of the permanent injunctions as necessary by including such "fencing in" provisions as are reasonably necessary to ensure that the Defendants

and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

C. That the Court enter judgment against Defendants, jointly and severally, for amounts necessary to restore to consumers all money acquired by means of acts or practices that violate the Consumer Fraud Act, pursuant to Iowa Code § 714.16(7).

D. That the Court enter judgment against Defendants, jointly and severally, for such additional funds as are necessary to ensure complete disgorgement of all ill-gotten gain traceable to the unlawful practices alleged herein, pursuant to Iowa Code § 714.16(7).

E. That the Court enter judgment against Defendants, jointly and severally, for up to \$40,000.00 for each separate violation of the Consumer Fraud Act, by each Defendant, pursuant to Iowa Code § 714.16(7).

F. That the Court award the State interest as permitted by law.

G. That the Court enter judgment against Defendants, jointly and severally, for mandatory attorney fees, state's costs and court costs, pursuant to Iowa Code § 714.16(11).

H. That the Court grant such additional relief as the Court deems just and equitable, including appointing a special master, if necessary, in order to assist in determining restitution to consumers and/or reformation or rescission of existing consumer contracts with the Defendants.

#### **Iowa Consumer Credit Code**

A. That the Court enter an order that consumers with existing contracts with the Defendants may either have the contract reformed to conform to the terms of the Iowa Consumer Credit Code or have the contract rescinded pursuant to Iowa Code § 537.6110(2).

B. That the Court enter an order permanently enjoining each of the Defendants and (as

applicable) each Defendant's directors, officers, principals, partners, employees, agents, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations, or other entities, acting in concert or participating with Defendants who have actual or constructive notice of the Court's injunction from continuing to engage in the unlawful practices described in this Petition, pursuant to Iowa Code §§ 537.6110 and 537.6111.

C. That the Court expand the provisions of the permanent injunctions as necessary by including such "fencing in" provisions as are reasonably necessary to ensure that the Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

D. That the Court enter judgment against the Defendants, jointly and severally, for all amounts of money that individual consumers have a right to recover, pursuant to Iowa Code § 537.6113(1).

E. That the Court enter judgment against the Defendants, jointly and severally, for civil penalties for the ICCV violations, pursuant to Iowa Code § 537.6113(2).

F. That the Court enter judgment against the Defendants, jointly and severally, for the reasonable costs of making the investigation, pursuant to Iowa Code § 537.6106(1).

#### **Ongoing Criminal Conduct**

A. That the Court, pursuant to Iowa Code § 706A.3(3)(a)-(g), Ongoing Criminal Conduct, order any combination of the following civil remedies as appropriate:

- (1) Order any Defendant to divest themselves of any interest in the enterprise, or in any real property.

- (2) Impose reasonable restrictions upon the future activities or investments of Defendants, including, but not limited to, prohibiting any Defendant from engaging in the same type of endeavor as alleged herein.
- (3) Order the dissolution or reorganization of the enterprise.
- (4) Order the payment of all reasonable costs and expenses of the investigation and prosecution of this matter, including reasonable attorney fees in the trial and appellate courts.
- (5) Order the forfeiture of any property subject to forfeiture under chapter 809A.
- (6) Order the suspension or revocation of any license, permit, or prior approval granted to Defendants by any agency of the State of Iowa.
- (7) Order the revocation of any certificate authorizing the Defendant foreign corporations to conduct business within this State of Iowa.

B. That the Court enter judgment against the Defendants, jointly and severally, for threefold the proceeds acquired, maintained, produced, or realized by or on behalf of the Defendants by reason of a violation of this chapter pursuant to Iowa Code § 706A.3(12).

C. That the Court enter judgment against the Defendants, jointly and severally, for the costs and expenses of the investigation and prosecution of this action, including reasonable attorney fees pursuant to Iowa Code § 706A.3(12).

D. That the Court retain jurisdiction for purposes of enforcement.

E. That the Court grant such additional relief as the Court deems just and equitable.



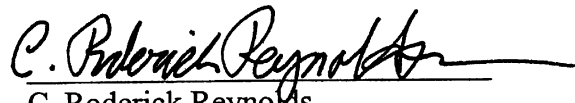
Respectfully submitted,

THOMAS J. MILLER  
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Deputy Attorney General of Iowa

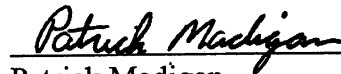
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